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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Federal-State Joint Board on Universal Service)

Fourth Order on Reconsideration)

CC Docket No. 96-45

AAD/USB File No. 98-50

DA No. 98-608

REPLY OF BELL ATLANTIC-NEW JERSEY, INC.

None of the three parties that support the petition of the New Jersey Ratepayer Advocate (filed Mar. 19, 1998) provides any valid reason to grant it. As Bell Atlantic showed in its opposition, the Commission should flatly reject the Advocate's own attempt to forum-shop a matter that has been fully heard by the New Jersey Board of Public Utilities – at the Advocate's request, no less – and is awaiting a decision in that forum. If it reaches the merits, the Commission should find that the Access New Jersey Rates do not qualify as the "lowest corresponding prices" for purpose of determining universal service discounts for schools and libraries, and should therefore deny the Petition.

Argument

AT&T's comments simply repeat the Advocate's arguments that the Access New Jersey rates should be subject to a further universal service discount. Other than conclusory statements to the contrary, however, AT&T provides no substantive basis to refute Bell Atlantic's showing that the Access New Jersey rates constitute a special regulatory subsidy, that they were negotiated under very different conditions, and that they are state-supported rates. See Bell Atlantic at 4-6. Any one of these criteria would remove the Access New Jersey rates from

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the lowest corresponding price provisions of the Commission's Universal Service Order. *See Fourth Order on Reconsideration*, 13 FCC Rcd 2372, ¶¶141, 196 (1997); *Report and Order*, 12 FCC Rcd 8776, ¶484 (1997).

In addition, the Access New Jersey program is an intrastate universal service program that is separate from, but consistent with, the federal program. Such state programs are expressly authorized under Section 254(f) and (h)(1) of the Act, 47 U.S.C. §§ 254(f), (h)(1). It would be inconsistent with these provisions for the Commission to treat this separate state program as if it established the federal lowest corresponding price for the purpose of the universal service program, then provide further federal discounts from the intrastate rates established by the state commission. Such action would interfere with the ability of the states to establish the separate intrastate programs that the Act specifically grants them.

The Executive Director of the New Jersey Library Association confines her comments to a recitation of the financial needs of the 312 public libraries in New Jersey. There is no doubt that these libraries, like public libraries nationwide, provide outstanding service to the public within a very tight budget. It was for that reason that Congress and the Commission provided that libraries should receive telecommunications services at substantial discounts – up to 90% below the rate charged the general public. And the Access New Jersey program offers even lower rates to many libraries than they would receive if they chose the federal program, with no increased burden on the federal fund. Therefore, New Jersey's libraries are better off than they would be if only the federal universal service program were available to them. The Commission found the federal program alone to be sufficient to meet the telecommunications needs of schools and libraries, so there is no basis for a finding that the federal program, coupled with the alternative Access New Jersey program, is inadequate.

Finally, the New Jersey Cable Telecommunications Association ("NJ Cable") makes the curious argument that the Access New Jersey rates would impede competition unless they are treated as the Lowest Corresponding Prices and are subject to further discount. NJ Cable attempts to support its argument by attaching the 186 page transcript of the cross-examination of Bell Atlantic witness Harold W. West in hearings before the NJ Board on September 18, 1997. In that testimony, however, Mr. West simply presented a detailed analysis of the Access New Jersey program, and showed the benefits of the program to both the schools and libraries and the ratepayers of New Jersey. Nothing in his testimony supports the Advocate's petition or is inconsistent with Bell Atlantic's opposition.

To the extent that NJ Cable claims that competition will somehow be harmed, its arguments appears to go to the Access New Jersey rates themselves, not whether the federal discount applies. The New Jersey Board approved those rates after exhaustive hearings.¹ Moreover, the Access New Jersey rates are for intrastate services which are subject solely to state jurisdiction. *See* 47 U.S.C. § 152(b).

NJ Cable appears to argue, however, that the Access New Jersey rates would not harm competition if they were subject to further universal service discounts. NJ Cable at 9-10. That argument is counter-intuitive. If other providers cannot compete against the Access New Jersey rates, as NJ Cable suggests, then it would be in their interest to minimize the instances in which schools and libraries will want to take service under those rates. But if the Ratepayer Advocate's petition were granted and federal universal service discounts applied to those rates, schools and libraries would always take service under those rates, because they would always be

¹ NJ Cable states that it participated actively in many of the relevant proceedings before the New Jersey Board. NJ Cable at 3.

lower than the tariffed rates with the universal service discount. As Mr. West's testimony shows, that was neither the intent of the parties that entered into the stipulation that included those rates, nor of the New Jersey Board when it approved them. Instead, by its terms, the Access New Jersey program was intended as an alternative to the federal discount program that schools and libraries could choose when it was to their benefit.

New Jersey Cable also appears to claim that the public interest requires that the Access New Jersey rates be further discounted. The example that NJ Cable uses in its comments, however, shows that the public interest is fully served by giving customers a choice between the federal discount and the Access New Jersey rates. *See* NJ Cable at 5. Under that example, the tariffed monthly rate for a 56 kbps SMDS circuit is \$225 and the monthly Access New Jersey rate is \$100, a 56% discount.² A school or library that qualifies for a federal discount of more than 56% would choose to take service under the federal universal service program, because its rate would be less than \$100, and the carrier that provides the service would receive the difference between \$225 and the federal discount rate from the universal service fund. A school or library that qualifies for a discount smaller than 56% would choose the \$100 Access New Jersey rate, because it would need to pay more than \$100 under the federal program. The school or library benefits from receiving service at a rate lower than it would receive if only the federal discount were available. The reimbursement from the federal universal service fund would be no

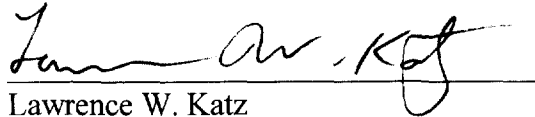
² If a competitor bid a pre-discount rate that is less than \$225, many schools and libraries would find that rate, with the discount, lower than the Access New Jersey rate and are likely to take service from the competitor. For simplicity, the example here assumes that there is no lower competitive bid.

higher than it would be in the absence of the Access New Jersey program.³ Under this program, many schools and libraries are better off – and none worse off – than under the federal program alone. The burden on the federal fund is no greater. If anyone loses, it is Bell Atlantic, which must pay the difference. There is certainly no basis upon which the Commission can find that the program is not in the public interest.

Conclusion

None of the three parties that filed comments has provided any justification for granting the Advocate's Petition, nor has the Advocate itself. The Petition should be denied.

Respectfully Submitted,


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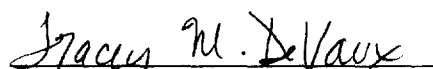
Attorney for Bell Atlantic-New Jersey, Inc.

May 5, 1998

³ Bell Atlantic would receive the same federal reimbursement as it would receive in the absence of the Access New Jersey program, even though the school or library would pay a lower rate than it would under the federal program.

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 1998 a copy of the foregoing "Reply of Bell Atlantic-New Jersey, Inc." was sent by first class mail, postage prepaid, to the parties on the attached list.


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